In the High Court of Punjab and Haryana at Chandigarh.

Civil Revision No.1662 of 1984.

Date of decision:18.4.2007.

Mahant Sarowar Nath.

...Petitioner.

Versus

Amar Nath Pardesi and others.

...Respondents.

...

Coram: Hon'ble Mr. Justice S. N. Aggarwal.

...

Present: Mr.Jaspal Singh Advocate for the petitioner.

Mr.B. R. Mahajan Advocate for respondent No.1.

...

Judgment.

S. N. Aggarwal, J.

Mahant Sarowar Nath filed ejectment petition under Section 13 of the East Punjab Urban Rent Restriction Act against the respondents. It was pleaded that Amar Nath Pardesi, respondent No.1 was the tenant on the monthly rent of Rs.13/- per month. The demised property consisted of two residential rooms along with a courtyard. The said tenant/respondent has raised unauthorised construction in the courtyard in the shape of a verandah, one room and one shop. All these material alterations have been made by the respondent-tenant without the written consent of the petitioner. The shop has been sublet to the Dry Cleaners and Launderers. Part of the

courtyard has also been sublet in favour of Bishan Dass Mahajan, respondent. Hence, ejectment was sought on the ground of non payment of arrears of rent, subletting, ceasure to occupy the property, using the property for a purpose other than that for which it was rented out, impairing the value and utility of the building etc.

Amar Nath Pardesi filed written statement and contested the case. Preliminary objection was pleaded that he was the owner of demised property and the jurisdiction of Rent Controller was disputed. The said respondent re-asserted on merits that he was in possession since 1947 after the partition of the country and his possession was continuous, peaceful and hostile and,therefore, he has become owner by adverse possession. He denied his status as a tenant. It was also denied if he had sublet the premises. He asserted his right to use the property in any manner he liked. It was admitted that the shop and the rooms were constructed by him but it was done after getting the site plan sanctioned from the Municipal Committee. It was denied if he had parted with the possession of any part of the courtyard.

Issues were framed.

The parties led the evidence.

The learned Rent Controller vide judgment dated 14.1.1983 found that there was relationship of landlord and tenant between the parties and ground for ejectment was made out. Therefore, the petition for ejectment was accepted and the respondents were directed to hand over the vacant possession of the demised property to the petitioner.

Amar Nath Pardesi filed an appeal against the said judgment

dated 14.1.1983. The learned Appellate Authority reversed the finding of fact recorded by the learned Rent Controller,accepted the appeal and set aside the order of ejectment passed against the respondents vide judgment dated 20.2.1984.

Hence, the present petition.

Submissions have been considered.

The petitioner had pleaded that he was the owner and landlord of the demised property and Amar Nath Pardesi, respondent was a tenant under him. This fact has been admitted by the respondent-tenant in his statement which he had made on 1.1.1978 in the civil suit titled as **Sardari Lal Versus Amin Chand.** A copy of his statement has been proved on the file by the petitioner as Exhibit A-1. In t his statement,the respondent-tenant has deposed that Gian Chand and Amin Chand were tenants of Mahant Sarowar Nath and those premises adjoined the premises in his possession. In cross-examination, he admitted that he (Amar Nath Pardesi) was also a tenant under Mahant Sarowar Nath. He had not written any lease deed/rent deed nor he had received any receipt in token of having paid the rent. Two things were made clear by the respondent-tenant in his statement that the property under the tenancy of Amin Chand and Gian Chand was owned by Mahant Sarowar Nath and adjoined the property in possession of Amar Nath Pardesi,respondent-tenant in the present case. Secondly, he (Amar Nath Pardesi) himself was also a tenant under Mahant Sarowar Nath and no lease deed was scribed nor he had received any receipt in token of having paid the rent.

The site plan Exhibit A-2 also proves that the property owned

by Mahant Sarowar Nath was in possession of Amin Chand etc. This corroborates the above-mentioned statement made by the respondent that the property under the tenancy of Amin Chand was owned by Mahant Sarowar Nath and adjoined the disputed property.

Amar Nath Pardesi respondent while appearing as RW1 denied having made any statement on 19.1.1978 in the suit titled as **Sardari Lal Versus Amin Chand** or having made any statement copy of which was Exhibit A-1. Statement Exhibit A-1 has been proved on the file by Krishan Lal, Ahlmad who appeared as AW-2 and had brought the original record from which copy of statement was proved. It was never suggested to this witness if such a statement was never made by Amar Nath Pardesi or if the identity of the deponent of that statement was in dispute. The respondent-tenant, therefore, has been proved to be a liar when he denied having made statement dated 19.1.1978 in the civil suit **Sardari Lal Versus Amin Chand etc.** or having admitted his relationship with the petitioner.

Therefore, a copy of statement dated 19.1.1978 made by Amar Nath Pardesi, respondent-tenant has been proved as Exhibit A-1 in which he has admitted that he was a tenant under Mahant Sarowar Nath and the property has also been connected with the same which is in dispute as it adjoins the premises in possession of Amin Chand,tenant under Mahant Sarowar Nath. The learned Lower Appellate Court has gone wrong in mis-interpreting this piece of evidence.

The submission made by the learned counsel for the respondent was that the date of tenancy is not mentioned in his ejectment petition and that while appearing as AW-5, Mahant Sarowar Nath has deposed that rent

note was executed but it was misplaced and that he did not issue the rent receipts. Hence, it was submitted that the petitioner was to prove his own case. He cannot draw any inference from the statement of respondent-tenant. Since no receipt has been proved, therefore, the relationship of landlord and tenant has not been proved.

This submission has been considered. It is totally misplaced. Whether the rent note was written or not and whether the rent receipts were issued or not are material only to the extent of proving the tenancy. When the tenancy itself is admitted by the respondent-tenant, then the execution of the rent note or the execution of the rent receipt pales into insignificance and,therefore, no benefit can be given to the respondent-tenant on the plea that the rent note or rent receipts are not pleaded or proved by the petitioner.

It further deserves to be noticed that the copy of assessment register of Municipal Committee for the year 1967-68 has been proved on the file as Exhibit A-10. Mahant Sarowar Nath is shown to be the owner of the property in dispute and Amar Nath Pardesi is shown as a tenant. This document, in the context of admission made by the respondent-tenant, becomes very material. The assessment register is a public record and, therefore, its authenticity is to be examined in the context of other evidence on the record. Therefore, this entry corroborates the admission made by the respondent-tenant himself that he was a tenant in the demised property under Mahant Sarovar Nath.

The submission of learned counsel for the respondent was that he had got the site plan approved from the Municipal Committee as an owner and had raised construction over it as early as 1970 and, therefore, he

was the owner in possession. There is no doubt about it that the respondents had submitted the site plan for which the respondents have examined Vijay Kumar, Municipal Committee, Gurdaspur as RW-5 but this witness has admitted in his cross-examination that one of the objections entered in the proposed site plan was that the site where Amar Nath Pardesi wanted to raise construction did not belong to him and no permission from the owner of the site was attached with the application. This objection, therefore, clearly falsifies the version of the respondent-tenant that he was the owner of the suit property. If he had been the owner, he would have refuted this objection raised by the official of the Municipal Committee while sanctioning the site plan.

The next submission of the learned counsel for the respondents was that in the assessment register for the year 1978-79 (copy of which is Exhibit A-9), the respondent is shown to be the owner. No doubt it is so, but it has to be seen in the context that the respondent-tenant while appearing as RW-1 has admitted in his statement made on 13.11.1982 that he was the Municipal Commissioner for the last four years. It means, therefore, that he was a Municipal Commissioner in 1978. It, appears, therefore, that the entry in the assessment register for the year 1978-79 has been got incorporated by the respondent-tenant under his own influence. If the entry in the assessment register of Municipal Committee,Gurdaspur for the year 1967-68 was in the name of the petitioner in which the respondent was shown as a tenant, how the said entry came to be changed in the year 1978-79 has not been explained by the respondent-tenant nor any overt-act or change of circumstances after 1967-68 has been pleaded or proved by the respondent-

tenant. Therefore, the entry in the assessment register for the year 1978-79 appears to be palpably false made under the influence of the respondent-tenant.

The respondent-tenant is also falsified about the date of his possession over the suit property. In the written reply, he has pleaded that he is in possession of the suit property since 1947 immediately after the partition of the country but while making a statement in the Court as RW-1 on 13.11.1982, he has deposed that he was in possession of the disputed property for the last 25/30 years which means from 1952 to 1957. Therefore, the version of the respondent-tenant that he came in possession of the suit property in 1947 has been falsified by his own stand.

On the other hand, the version of the petitioner is that the respondent-tenant came in possession of the suit property in 1964 and it stands corroborated by the entry in the assessment register of Municipal Committee, Gurdaspur made in the year 1967-68 in which the petitioner is shown to be the owner of the suit property and the respondent is shown to be in possession as the tenant. The respondent-tenant has not shown any documentary evidence to prove his possession over the suit property prior to 1964.

From the discussion held above, therefore, it is clearly proved that the respondent-tenant was in possession of the suit property as a tenant under the petitioner and the relationship of landlord and tenant is proved. The learned Lower Appellate Court had mis-read the evidence. The respondent himself admits having raised construction over the suit property. It was made by the respondent-tenant without the consent of the petitioner.

The petitioner alleged that it has impaired the value and utility of the shop in dispute. The respondent admits having not paid the arrears of rent to the petitioner. Therefore, the respondent-tenant and sub tenants are liable to be ejected.

This petition is accordingly accepted. The impugned order dated 14.1.1983 is set aside. The respondents are directed to hand over vacant possession of the suit property to the petitioner within a period of two months.

April 18,2007. (S. N. Aggarwal)
Jaggi Judge